

FIRST AMENDMENT
TO BUSINESS ACCELERATOR MASTER LEASE

THIS FIRST AMENDMENT TO BUSINESS ACCELERATOR MASTER LEASE ("FIRST AMENDMENT") is entered into this ____ day of _____, 2015, by and between the City of Flagstaff (the "City"), a municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and Northern Arizona Technology & Business Incubator, Inc., dba NACET (the "Provider"), an Arizona corporation, with offices at 2225 North Gemini Drive, Flagstaff, Arizona, 86001, as further set forth below.

RECITALS

A. Landlord and Provider are parties to the Business Accelerator Master Lease dated January 1, 2015, respecting that building located at 2225 North Gemini Drive in the City of Flagstaff, Arizona, which building is commonly known as the Northern Arizona Technology & Business Incubator, Inc., dba NACET (the "Provider")

B. The Landlord and Provider now desire to amend the Business Accelerator Master Lease on the terms and conditions contained in this First Amendment.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Business Accelerator Master Lease as follows:

Section 1. Amendments. The Business Accelerator Master Lease is hereby amended as follows:

RECITALS

B. Pursuant to the terms of the Grant, Landlord has constructed, equipped and furnished an approximate 28,000 square foot LEED facility on that parcel of real property located at 2201 North Gemini Drive in the city of Flagstaff, Arizona, which building is commonly known as Innovation Mesa Business Accelerator Facility (the "Premises").

D. Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord for the purpose of the operation for research and development, science, technology and clean energy focused business accelerator for the benefit of Landlord, Tenant and the citizens of the city of Flagstaff and the State of Arizona. In connection therewith, subject to the limitations and other provisions of this Lease, the parties hereto acknowledge that the Tenant intends to sublease portions of the Premises to third parties for the purpose of the development of

technology and science startups, Tier 2 companies, and entrepreneurs meeting the objectives of the Grant, a copy of which has been provided to Tenant.

3.1 **Rent.** At the times and in the manner set forth herein, Tenant shall pay to Landlord as rent for the Premises ("Rent") the sum of the following amounts:

3.1.1. **Rental Agent/Calculation of Rents.** NACET will act as the Rental Agent for the City of Flagstaff, refer to section 3.4. A Rental Rate Sheet which meets the City pro-forma will be submitted by NACET and approved annually by the Landlord or designated agent. In addition, NACET will levy a 6% common area (such as conference room, policy room, collaborative space, kitchen, etc.) charge to each tenant's base rent. NACET will collect these rents per the terms and conditions noted in the Sublease Agreement. The Base Rent payable shall be calculated on July 1 by the increase (if any) (on a percentage basis) in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U), USA City Average (1982 – 84 =100) ("Index") for the prior month and applied on annual anniversary date. In addition, the City of Flagstaff will monitor utility usage and costs on an annual basis and reserves the right to make adjustments based on mutual consent.

5.2 **Insurance Requirements.** In addition to the requirements in *Section 7* of this Lease, Tenant shall not engage in or permit any activity which will cause the cancellation of, or increase the existing premiums on, any insurance relating to the Premises. Tenant shall not permit to remain in or about the Premises any article that may be prohibited by the broadest form of "All Risk" or "Special Form" property damage insurance.

7. WAIVER, INDEMNITY AND TENANT'S INSURANCE.

7.1 **Assumption and Waiver.** Tenant assumes all risk of, and waives all claims against Landlord arising from, damage, loss or theft of property or injury to persons in, upon or about the Premises from any cause. The foregoing waiver includes, without limitation, the following risks against which Tenant should maintain adequate insurance to protect Tenant equipment and other personal property:

7.1.1. All-risk casualty loss insurance with respect to all Improvements constructed by Tenant on the Premises,

7.1.2. Any defect in or failure of plumbing, heating or air-conditioning equipment, electric wiring, water pipes, stairs, railings or walks;

7.1.3. The disrepair of any equipment;

7.1.4. The bursting, leaking or running of any tank, washstand, water closet, drain or any pipe or tank in, upon or about the Premises;

7.1.5. The backup of any sewer pipe or down spout;

- 7.1.6. The escape of steam or hot water;
- 7.1.7. Water, snow or ice;
- 7.1.8. The falling of any fixture, plaster or stucco;
- 7.1.9. Broken glass; and
- 7.1.10. Any unauthorized or criminal entry of third parties within the Premises.

7.2 **Indemnification.**

7.2.1 **Tenant's Indemnification of Landlord.** To the fullest extent permitted by law, the Tenant agrees to indemnify, defend, save and hold harmless Landlord, and its officers, officials, council members, citizens, agents, employees and volunteers (hereinafter referred to as "Indemnatee") for, from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "Claims") including but not limited to, personal injury (including death) or property damage caused, in whole or in part, by the acts, errors, omissions, negligence, or alleged negligence of Tenant or any of Tenant's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Tenant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent acts of the Indemnatee, be indemnified by Tenant for, from and against any and all Claims. It is agreed that Tenant will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable.

- 7.3. **Environmental Indemnification of Landlord by Tenant.** Tenant shall defend, indemnify, and hold harmless Landlord for, from and against any and all future claims, demands, complaints and/or actions made or brought against Landlord pertaining to the Premises and arising under any Environmental Law, Rule, Regulation or otherwise based upon any Hazardous Materials condition. This defense and indemnity includes, without limitation, any claims, demands, complaints, and/or action, asserted under CERCLA, WQARF, RCRA, and federal and state common law pertaining to Hazardous Materials, including any such claim based upon Landlord's alleged liability as an owner or operator of the Premises under CERCLA or WQARF.

- 7.4. **Insurance.** Tenant shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Tenant, Tenant's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Landlord does not represent or warrant that the minimum limits set forth herein are sufficient to protect Tenant from liabilities that might arise out of this Lease, and Tenant is free to purchase such additional insurance as Tenant may determine is necessary.

7.4.1. **Minimum Scope and Limits of Insurance.**

7.4.1.1. **Commercial General Liability - Occurrence Form**

General Aggregate -- \$2,000,000
Each Occurrence -- \$1,000,000

7.4.1.2. **Workers' Compensation and Employer's Liability**

Workers' Compensation -- Statutory
Employer's Liability: Each Accident -- \$500,000
Disease - Each Employee -- \$500,000
Disease - Policy Limit -- \$500,000

- 7.4.2. **Other Insurance Requirements.** The policies shall contain, or be endorsed to contain, the following provisions:

7.4.2.1. **Commercial General Liability Coverage.**

7.4.2.1.1. Insurance coverage, other than Workers' Compensation, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insured. Evidence of insurance and formal endorsements to that effect shall be current and on file with the City of Flagstaff. Such endorsement shall include both ongoing and completed operations.

7.4.2.1.2. Coverage provided by Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.

7.4.2.2. **Workers' Compensation and Employee's Liability Coverage.** The insurer agrees to waive all rights of subrogation against Landlord, its officials, officers, agents, employees and volunteers for losses arising from Tenant's operations, occupancy and use of the Premises subject to this Lease.

7.4.3. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Landlord.

7.4.4. **Acceptability of Insurers.** Tenant shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Landlord does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.

13.2 **Minimum Sublease Occupancy Requirement.** Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant hereby acknowledge and agree that, as a material part of the consideration to Landlord for its execution of this Lease, Tenant shall, commencing upon the first anniversary of the Commencement Date, and continuing thereafter through the duration of the Term, and each Extension Term, as applicable, maintain a minimum number of Subtenants within the Premises occupying these minimum amounts of leasable square footage for the following years: Year 1 (partial and/or full) - 25% of leasable square footage or 4,706 square feet; Year 2 - 50% of leasable square footage or 9,412square feet; Year 3 - 75% of leasable square footage or 14,117 square feet; Year 4 and subsequent years - 80% of leasable square footage or 15,058square feet, exclusive of any space occupied by Tenant for Tenant's offices and "common areas," including but limited to, stairways, passageways, hallways, conference/meeting rooms, breakout rooms, kitchen areas, area utilized by the EOC, the "Minimum Sublease Occupancy Requirement"). Except by mutual agreement otherwise between the parties, at any time after the first anniversary of the Commencement Date, if Tenant fails to satisfy the Minimum Sublease Occupancy Requirement for a period of ninety (90) consecutive days or more, Landlord shall have the right, but not the obligation, to elect to terminate or extend this Lease by written notice to Tenant. In the event that Landlord terminates the lease, all further rights, duties and obligations of the parties hereunder shall terminate, except with respect to any continuing indemnity obligations of the parties hereunder.

14. **MAINTENANCE AND UTILITIES.**

14.1 **Obligations of the Landlord.** The Landlord will be responsible to set up and pay the utilities including electric, gas, water, wastewater/sewer, storm

water, environmental management fee, natural gas, electricity, power, telephone, public internet access which includes equipment and Internet Service (EOC/conference room, policy room and collaborative space), trash removal, recyclables and all other services or utilities used within or about the Premises by the Tenant or any Subtenant. The Landlord will monitor above mentioned utility costs and reserves the right to amend the terms. The Landlord will provide janitorial services, including supplies and pest control as agreed upon through the Landlord's service contracts. Any enhanced janitorial services requested by NACET and/or the Tenant(s) is NACET or the Tenant(s) responsibility. The Landlord will be responsible for any structural maintenance. Tenants will be responsible to pay for any and all excessive or careless damages outside of normal wear and tear. The Landlord will provide weekly cleaning service for common areas, and the Tenants shall furnish and clean their own leased areas. The Landlord will be responsible for maintenance of the exterior landscaping and shall be responsible for snow removal from the sidewalks and parking areas.

24. **NOTICES.** No notice, consent, approval or other communication given in connection herewith shall be validly given, made, delivered or served unless in writing and delivered in person or sent by registered or certified United States mail, postage prepaid, to the parties at the following addresses:

To Tenant:	NACET
	2201 N. Gemini Dr.
	Flagstaff, Arizona 86004
	Attn: President/CEO

- 25.4 **No Waiver.** No delay or omission of Landlord to exercise any right or power shall impair any such right or powers or shall be construed to be a waiver of any nonperformance by Tenant or acquiescence therein. No waiver of any nonperformance shall be effective unless it is in writing. No written waiver by Landlord shall be deemed to be a waiver of any other Lease provision, or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act by Tenant shall not be deemed to render unnecessary the procurement of Landlord's consent to or approval of any subsequent act of Tenant, whether or not similar to the act so consented to or approved.

S U B L E A S E

11. **INDEMNIFICATION OF SUBLESSOR AND MASTER LESSOR.** To the fullest extent permitted by law, the Sublessee agrees to indemnify, defend and hold harmless Sublessor and the Master Lessor for, from and against any and all penalties, costs, expenses (including attorneys' fees), claims, demands and causes of action arising out of or in connection with any accident or other occurrence in

or on the common areas (including without limiting the generality of the term "common areas," and "common areas," including but not limited to, stairways, passageways, hallways, conference/meeting rooms, breakout rooms, kitchen areas, area utilized by the EOC), the use of which Sublessee may have in conjunction with other tenants and occupants of the Premises, when such injury or damage shall be caused in part or in whole by the act, neglect, fault or omission of any duty with respect to the same by Sublessee, its agents, servants, employees, invitees, visitors, permittees, customers, clients, guests or tenants.

12. INSURANCE.

12.1 Insurance. Sublessee shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Sublessee, Sublessee's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Master Lessor and Sublessor do not represent or warrant that the minimum limits set forth herein are sufficient to protect Sublessee from liabilities that might arise out of this Lease, and Sublessee is free to purchase such additional insurance as Sublessee may determine is necessary.

12.2 Minimum Scope and Limits of Insurance. Sublessee shall provide coverage at least as broad and with limits not less than those stated below.

12.2.1. Commercial General Liability - Occurrence Form

General Aggregate -- \$2,000,000
Each Occurrence -- \$1,000,000

12.2.2. Workers' Compensation and Employer's Liability

Workers' Compensation -- Statutory
Employer's Liability: Each Accident -- \$500,000
Disease - Each Employee -- \$500,000
Disease - Policy Limit -- \$500,000

12.2.3. Self-Insured Retention/Deductibles. Any self-insured retentions and deductibles must be declared to and approved by Master Lessor and Sublessor.

12.2.5. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:

12.2.5.1. Commercial General Liability Coverages.

12.2.5.2 Insurance coverage, other than Workers' Compensation, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insured. Evidence of insurance and formal endorsements to that effect shall be current and on file with the City of Flagstaff. Such endorsement shall include both ongoing and completed operations.

12.2.5.2.1. Coverage provided by Sublessee shall not be limited to the liability assumed under the indemnification provisions of this Lease.

12.2.5.3. Workers' Compensation and Employee's Liability Coverage. The insurer agrees to waive all rights of subrogation against Master Lessor and Sublessor, its officials, officers, agents, employees and volunteers for losses arising from Sublessee's operations, occupancy and use of the Premises subject to this Lease.

12.2.5. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Master Lessor and Sublessor.

12.2.6. Acceptability of Insurers. Sublessee shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Master Lessor and Sublessor does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.

12.3. Liability Insurance. Sublessee agrees to procure and maintain at its own cost and expense, during the entire term of this Sublease and any extensions thereof, comprehensive public liability insurance covering the Subleased Premises, which insurance shall also name Sublessor and Master Lessor as additional named insureds. The liability coverage under such insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury, illness or death to persons or damage to property in any one incident. Prior to, and as a condition of, taking possession of the Subleased Premises, Sublessee will provide Sublessor with certificates of

such insurance and appropriate endorsement, satisfactory to Sublessor, evidencing Sublessee's compliance with the requirements of this *Section 12.3*.

Section 2. No Further Modification. Except as specifically modified and amended pursuant to the terms of this First Amendment, the Lease shall remain in full force and effect, and the terms and conditions thereof are hereby ratified and affirmed by the parties thereto.

Section 3. Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 4. Effective Date. This Amendment shall be effective as of the date first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have duly executed this First Amendment to Master Lease as of the date first above written.

City of Flagstaff

**Northern Arizona Technology & Business
Incubator, Inc., dba NACET (Provider)**

Gerald Nabours, Mayor

Annette Zinky, President and CEO

Attest:

City Clerk

Approved as to form:

City Attorney

Date of Execution:_____